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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,785	07/13/2001	Laurence Sebillotte-Arnaud	210374US0	1492

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

10

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,785

Applicant(s)

SEBILLOTTE-ARNAUD ET AL.

Examiner

Necholus Ogden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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Response to Amendment

Claim Objections

1. Claim 12 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 11. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

1. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al (6,277,797).

Glenn, Jr. et al disclose a skin cleansing composition comprising 0.5 to 10 parts by weight of a fumed silica produced by the vapor phase hydrolysis of silicone tetrachloride in a hydrogen oxygen flame (col. 4, lines 14-17) and has a particle size of 0.1 to 100 microns with a surface area of greater than 50 m²/gram (col. 4, lines 30-43). Glenn, Jr. et al further teach the inclusion of 5 to 30 parts by weight of a surfactant system comprising anionic, nonionic and cationic surfactants (col. 10, lines 45-col. 12, line 41). With respect to the water content, Glenn, Jr. et al teach that water may be included in an amount from 30 to 80 parts by weight (col. 12, lines 44-51). Glenn, Jr. et al further teach the inclusion of polyhydric alcohols such as polyethylene glycol and

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ethers, polyoxyethylene esters of fatty acids (col. 12, lines 20-24 and col. 13, lines 5-26).

Glenn, Jr. et al lack a specific teaching in an example of each of the claimed components.

It would have been obvious to one of ordinary skill in the art to combine the components of Glenn, Jr. et al to specifically teach the claimed composition because each of the claimed components are taught in their requisite proportions and one skilled in the art, in the absence a showing to the contrary, would have been motivated to specifically teach the claimed compositions. Moreover, A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998).

Response to Arguments

2. Applicant's arguments filed 9-23-02 have been fully considered but they are not persuasive.

Applicant argues that no oxyethylenated polyols are mentioned in Glenn, Jr. et al.

The examiner contends and respectfully disagrees and directs applicant's attention to column 12, line 23 where polyoxyethylene esters of fatty acids are employed and column 13, line 5-26, where polyethylene glycols are disclosed as suitable polyols for the liquid composition of Glenn, Jr. et al.

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3. The declaration under 37 CFR 1.132 filed 9-23-02 is insufficient to overcome the rejection of claims 1-20 based upon Glenn, Jr. et al as set forth in the last Office action because: The showing is not commensurate in scope with the claimed invention.

Applicant's declaration is drawn to a narrow scope of the claimed invention and in contrast the claims are much broader. For example, applicant describes a specific alkyl polyglucoside in the declaration of example 2, but claims a much broader compound that includes a "foaming surfactant". Also, the declaration focuses on excluding a propoxylated compound. However, the claims do not exclude such compounds or are they closed to certain propoxylated components.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 703-308-3732. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Necholus Ogden
Primary Examiner
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no
November 29, 2002